

Advisory Opinion

IECDB AO 2009-01

March 19, 2009

Dale L. Walter
Iowa County Supervisor
Box 674
Williamsburg, Iowa 52361

Dear Supervisor Walter:

This opinion is in response to your letter of December 15, 2008, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12)¹ and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that you are a member of the Iowa County Board of Supervisors and are employed as a Business Representative for Teamsters Local 238. You previously negotiated collective bargaining contracts on behalf of county employees, but ceased that activity before running for elective office. Your current position does not have responsibility with bargaining units and you have no economic interest in the outcome of collective bargaining negotiations. Your salary with Teamsters Local 238 is not tied to the outcome of any collective bargaining agreement.

You also advise us that the Iowa County Attorney's Office reviewed the situation and concluded that you had a potential conflict of interest or an appearance of a conflict of interest and should abstain from any discussions or votes concerning collective bargaining agreements negotiated by Teamsters Local 238.

QUESTION:

Is it a conflict of interest for you as a county supervisor to discuss or vote on a collective bargaining agreement between the county and its employees that your employer helped negotiate?

OPINION:

Our jurisdiction in administering the laws in Chapter 68B to political subdivisions of government is advisory only. Under Iowa Code section 68B.32A(12), local government personnel may obtain an advisory opinion from the Iowa Ethics and Campaign Disclosure Board concerning the application of the chapter. If the advice in the opinion is followed, it constitutes a defense to a complaint. However, complaints alleging violations of the chapter by local government personnel are filed with the appropriate county attorney.²

We first remind you that our jurisdiction in determining whether or not you have a conflict of interest is limited to Iowa Code chapter 68B. We are not speaking to any other provision of law or common law principle. You have sought our guidance under the statutory authority as set out in the chapter. As such, we issue this opinion pursuant to that statutory authority without speaking one way or another to the letter issued by the Iowa County Attorney's Office.

Iowa Code section 68B.2A³ sets out the conflict of interest provisions applicable to all state and local government officials and personnel in Iowa. Under that section, you are prohibited from engaging "in any outside employment or activity which is in conflict" with your "official duties and responsibilities" as a member of the Iowa County Board of Supervisors. The statute then sets out three examples of when a conflict of interest is deemed to exist.

In reviewing those three examples, it appears that the only one that could apply is Iowa Code section 68B.2A(1)"c" that provides it is a conflict of interest if your "outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority" as part of your "duties of office...."

In the situation you describe, you are being asked to make decisions concerning an agreement on a contract between the county employees and the county. While we acknowledge that your employer negotiated the contract that you will ultimately be voting whether or not to approve, it is not Teamsters Local 238 that is coming under your "official control, inspection, review, audit, or enforcement authority." Rather, the actual contract between the county and its employees is what is coming under your purview.

Although your employer may gain some benefit to have an agreement that they negotiated be voted on favorably by the board of supervisors, you personally do not have a financial or economic stake in the outcome of the collective bargaining agreement. Your compensation from Teamsters Local 238 is not contingent or otherwise reliant upon approval of the collective bargaining agreement. There is no direct financial, economic, or personal benefit that you receive. Even any indirect benefit that you would receive is remote. You do not have a personal interest in the contract based on the information that you provided.⁴

Therefore, we do not believe that you have an impermissible conflict of interest as prohibited in Iowa Code section 68B.2A when dealing on behalf of the county with a collective bargaining agreement that your outside employer helped negotiate.

In closing, we do note that if the situation arose that you gained in your capacity as supervisor confidential information that would benefit your employer during negotiations you would need to refrain from providing any such information to Teamsters Local 238.⁵

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ Note that Iowa Code section 68B.32A(12) was formerly cited as Iowa Code section 68B.32A(11). The subsection was renumbered when the new Code of Iowa Volumes were published in February of 2009.

² See Iowa Code sections 68B.26 and 68B.32B(1). We do note that complaints alleging violations of Chapter 68B by local officials and local employees involving the lobbying laws are subject to the applicable jurisdictions of the House and Senate Ethics Committees (legislative lobbying) and the Board (executive branch lobbying) under Iowa Code sections 68B.31, 68B.32(1), and 68B.32A(13).

³ Note that this statute will be amended effective July 1, 2009 (see 2009 Iowa Acts, Senate File 52, sections 1 and 2). However, the amendments will not impact the analysis in this opinion.

⁴ Clearly, if you were the individual representing the bargaining units on behalf of Teamsters Local 238, or if you had a financial tie to the outcome of the contract negotiations, the analysis in this opinion would be different.

⁵ See Iowa Code section 68B.2A(1)“a”.